

United States Government

Department of Energy

memorandum

DATE: May 22, 2001

REPLY TO

ATTN OF: Office of Environmental Policy and Guidance: Boulos: 6-1306

SUBJECT:

Clean Air Act Protection of Stratospheric Ozone Final Rule – *De Minimis*
Exemption for Laboratory and Analytical Uses

TO:

Distribution

The purpose of this memorandum is to inform DOE program offices and field organizations that on March 13, 2001, the Environmental Protection Agency (EPA) issued a direct final rule (66 *FR* 14760) on "Protection of Stratospheric Ozone: *De Minimis* Exemption for Laboratory Essential Uses for Calendar Year 2001." This rule would affect DOE laboratories that purchase newly produced or imported class I ozone depleting substances (ODSs). Any such purchase could result in the need to provide a certification to the producer, importer, or distributor of the ODS (see below). Use of stockpiled or recycled class I ODSs for laboratory and analytical use would not be affected by this rule.

By way of background, §604(a) of the Clean Air Act (CAA) calls for a production phase-out of class I ODSs by January 1, 2000. However, both the Montreal Protocol and the CAA provide exemptions that allow for the continued import and/or production of class I ODSs for uses that are determined by the Parties to the Montreal Protocol to be essential. For the year 2001, the Parties to the Montreal Protocol granted the U.S. essential use allowances for laboratory and analytical uses of class I ODSs (66 *FR* 14761). Additionally, EPA's March 13 direct final rule makes the determination that continued import and production of class I ODSs for laboratory and analytical uses in 2001 is allowable as a *de minimis* use under the CAA (66 *FR* 14764). The basis for this determination was EPA's findings that 1) the amount of class I material needed for laboratory and analytical use is very small, 2) continued production of small amounts of class I ODSs is essential for many analytical tests mandated by EPA programs, 3) emissions of ODSs used for laboratory and analytical purposes are negligible, and 4) use of class I ODSs furthers basic science and medical research. The March 13 direct final rule amends 40 *CFR* 82.4(t) to allocate a *de minimis* exemption for 2001 for production and import of class I ODSs for all laboratory and analytical uses. There is no cap on the amount of class I ODSs that may be produced or imported for the year 2001 provided the use is consistent with the Montreal Protocol's treatment of laboratory uses (66 *FR* 14765).

To qualify for the exemption at 40 *CFR* 82.4(t)(3), the laboratory and analytical uses must satisfy the United Nations Environmental Programme's recommendations for conditions applied to exemption for laboratory and analytical uses. These recommendations are set out at 40 *CFR* 82, Subpart A, Appendix G.

Laboratory purposes are identified in Appendix G to include equipment calibration; use as extraction solvents, diluents, or carriers for chemical analysis; biochemical research; inert solvents for chemical reactions, as a carrier or laboratory chemical and other critical analytical and laboratory purposes. In addition, the certification requirement at 40 *CFR* 82.13(y) must be satisfied. This requirement states that:

A laboratory customer purchasing a controlled substance under the global laboratory essential-use exemption must provide the producer, importer, or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for laboratory applications and not be resold or used in manufacturing. The certification must include:

1. the identity and address of the laboratory customer
2. the name and phone number of a contact person for the laboratory customer
3. the name and quantity of each controlled substance purchased, and the estimated percent of the controlled substance that will be used for each listed type of laboratory application.

The direct final rule became effective on May 14, 2001.

The March 13, 2001 direct final rule is available at <http://www.eh.doe.gov/oepa/rules/66/66fr14760.pdf> on the Office of Environmental Policy and Guidance (EH-41) Web site.

If you have any questions concerning this rule, please contact Mr. Emile Boulos (emile.boulos@eh.doe.gov; 202-586-1306), or Mr. Ted Koss (theodore.koss@eh.doe.gov; 202-586-7964) of my staff.

(original was signed by Mr. Wallo)
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Director
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